

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

NANCY MARTIN and,)
MARY BETH BRACKIN,)
PLAINTIFFS,)
vs.) CASE NO. 1:05CV1172-F
CITY OF DOTHAN; JUDGE ROSE)
EVANS-GORDON, officially, and in)
her individual capacity; CITY OF)
DOTHON POLICE DEPARTMENT;)
CHIEF JOHN POWELL, Chief of)
Dothan Police Department, in his)
official capacity,)
DEFENDANTS.)

MOTION TO DISMISS

Come now the Defendants City of Dothan; City of Dothan Police Department; and Chief John Powell, Chief of Dothan Police Department, in his official capacity, and move this Honorable Court pursuant to Federal Rules of Civil Procedure 9(a), and 12 to dismiss the following parties and counts from Plaintiffs' Complaint and as grounds therefor state as follows:

Defendant City of Dothan Police Department

1. Plaintiffs' claims against the City of Dothan Police Department are due to be dismissed because the Department is not an entity subject to suit. Furthermore, Plaintiffs fail to make any allegations against the Dothan Police Department in any of their fifteen counts.

Defendant Police Chief John Powell, Official Capacity

2. Plaintiffs' claims against Police Chief John Powell in his official capacity are redundant to their functional equivalent claims made against the City of Dothan and are due to be dismissed. Furthermore, Plaintiffs fail to make any allegations against Police Chief John Powell in his official capacity in any of their fifteen counts.

COUNT FOUR

3. Count Four of Plaintiffs' complaint is due to be dismissed for failure to state a claim upon which relief can be granted.

4. Plaintiffs fail to state a cause of action against Judge Gordon by alleging Plaintiff "has cause to believe and does believe" Defendant caused a newspaper article to be published. (Plaintiffs' complaint, paragraph 68).

5. Plaintiffs' subjective beliefs are insufficient to allege the existence of a federally protected right.

COUNT SEVEN

6. Count Seven of Plaintiff's complaint fails to state a claim upon which relief can be granted for Defendants' alleged refusal to conduct discovery in an administrative proceeding.

COUNT THIRTEEN

7. Plaintiff Martin's claims under 42 U.S.C. § 2000e - 16(c) [sic], Title VII of the Civil Rights Act of 1964 are due to be dismissed for her admitted failure to exhaust her administrative remedies. (Paragraph 5, Plaintiff's complaint).

Respectfully submitted this 4th day of January, 2006.

s/ F. Lenton White
F. Lenton White (WHI035)
City Attorney
P.O. Box 2128
Dothan, Alabama 36302
(334) 615-3130

CERTIFICATE OF SERVICE

I hereby certify that I have this 4th day of January, 2006, served a copy of the foregoing on the following by placing same in the United States Mail properly addressed with adequate postage:

Ishmael Jaffree
951 Government St.
Bldg. Ste. 415
Mobile, AL 36604

s/ F. Lenton White
Of Counsel